

FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
)	CC Docket No. 02-6
Request for Review of Decision of)	
Universal Service Administrator and)	
Petition for Waiver by)	File Nos. 427100 (FY 2004),
)	423598 (FY 2004), 479653
Virgin Islands Department of Education)	(FY 2005), 512691 (FY 2006)
)	
Schools and Libraries Universal Service)	
Support Mechanism)	
)	

To: Federal Communications Commission

VIRGIN ISLANDS DEPARTMENT OF EDUCATION
REQUEST FOR REVIEW AND PETITION FOR WAIVER

The Virgin Islands Department of Education (“VIDE”)¹, pursuant to Section 54.719(b) of the Federal Communications Commission’s (“FCC”) rules,² hereby requests review of the action taken by the Universal Service Administrative Company (“USAC”) with respect to the Funding Request Numbers (“FRNs”) in the above-captioned applications.³

USAC approved the applications and funding requests at issue and disbursed funds to the vendor for services rendered. More than 13 years later, citing competitive bidding violations, USAC has determined to rescind the funding commitments and recover the funds disbursed. Specifically, USAC alleges that a VIDE employee participating in the vendor evaluation process was also associated with the selected service provider.

¹ Billed Entity Number 154494.

² See 47 C.F.R. § 54.719(b) (permitting parties aggrieved by an action taken by the Administrator, after seeking review from the Administrator, to seek review from the Commission).

³ The affected FRNs are (1) FRN 1182692 (Form 471 Application Number 427100); (2) FRN 1182594 (Form 471 Application Number 427100); (3) FRN 1179841 (Form 471 Application Number 423598); (4) FRN 1328656 (Form 471 Application Number 479653); and (5) FRN 1419628 (Form 471 Application Number 512691).

VIDE acknowledges that certain of USAC's factual findings are correct. However, as discussed in more detail below, USAC concluded inexplicably that VIDE was the party responsible for the violation and therefore responsible for repayment of all improperly disbursed E-rate funds. The record in this case shows that the service provider was responsible for the competitive bidding violation. Therefore, under the Commission's very clear rules, USAC's decision to seek recovery from VIDE is incorrect.

VIDE respectfully requests that the Commission expeditiously (1) reverse USAC's commitment adjustment determinations for the affected funding requests, (2) direct USAC to discontinue recovery actions against VIDE, and (3) to the extent necessary, waive Section 54.503 and any other Commission rules necessary to grant the requested relief. Because the request for review is being filed outside of the 60-day filing deadline, but within a reasonable time after VIDE received notice of USAC's adverse decision, VIDE also requests that the Commission waive the filing deadline in Section 54.720(a) of its rules.⁴

I. BACKGROUND

A. USAC's Decision

On December 27, 2017, USAC notified VIDE that it had discovered certain competitive bidding violations related to VIDE's basic maintenance contract with Basic Services, Inc. ("Basic Services").⁵ Specifically, USAC alleged that a VIDE employee, Joseph Philbert, participated in the vendor evaluation process while employed by Basic Services. As a result, USAC determined to recover funds disbursed for FRNs included on VIDE's funding year 2005 and 2006 applications.

VIDE timely filed an appeal with USAC on February 22, 2018. On July 2, 2018, while the funding year 2005 and 2006 appeal was pending with USAC, VIDE was notified that USAC had also determined to rescind funding commitments associated with its funding year 2004 application.

Accordingly, VIDE filed a second appeal with USAC on August 31, 2018.

⁴ 47 C.F.R. § 54.720(a) (requiring parties seeking review or waiver of an Administrator decision to file such requests within 60 days from the date the Administrator issues a decision).

⁵ Service Provider Identification Number 143008305.

On September 17, 2018, VIDE received an Administrator's Decision on Appeal letter informing it that USAC had denied the funding year 2005 and 2006 appeal.⁶ The correspondence was dated August 29, 2018. In its decision letter, USAC found and concluded as follows:

It was determined that Joseph Philbert, a [VIDE] employee, was a member of a vendor evaluation committee that selected Basic Services, Inc. as the service provider for the above listed Funding Request Number and also had an association with the service provider.

It was determined payments were made to Mr. Philbert by Sherwin Ray, the owner of Basic Services, Inc., during calendar years 2004-2006 when Philbert was employed on a part-time basis by Mr. Ray while also employed by [VIDE].

The applicant . . . should not delegate the evaluation role to anyone associated with a service provider.

In order to conduct an open and fair bidding process, the applicant should not have a relationship with a service provider prior to or during the competitive bidding process that could serve to unfairly influence the outcome of a competition.

An employee of VIDOE engaged in a relationship with a selected service provider and also served on a vendor evaluation committee that selected the service provider, which represents a conflict of interest that compromised the competitive bidding process.⁷

USAC also determined that VIDE was the party responsible for the competitive bidding violation, and that VIDE was therefore fully responsible for returning all improperly disbursed E-rate funds.

On November 9, 2018, VIDE received notification that USAC had similarly denied VIDE's funding year 2004 appeal.⁸ The explanation provided in the decision letter was identical to those provided in USAC's funding year 2005 and 2006 decisions.

⁶ Administrator's Decision on Appeal (FY 2005 and FY 2006), dated August 29, 2018, attached as Exhibit A.

⁷ *Id.*

⁸ Administrator's Decision on Appeal (FY 2004), dated November 9, 2018, attached as Exhibit B.

II. DISCUSSION

A. The Problems with USAC's Decision

1. USAC's Findings are Incomplete

There are key factual findings that USAC should have made but did not. Had USAC made these findings, it could not possibly have concluded that VIDE was the party responsible for the conflict of interest situation and thus the competitive bidding violation.

There is no evidence that VIDE either caused or was aware of the conflict of interest issue in this case. The alleged competitive bidding violations are primarily the result of Basic Services' actions. VIDE was deceived by a vendor that was aware from the beginning that it had an employee who VIDE also employed. Because of the work Mr. Philbert performed for VIDE, Basic Services was also aware that Mr. Philbert would more than likely sit on the vendor evaluation committee for a very large contract that Basic Services of course wanted to win.

Furthermore, even assuming that Basic Services did not know of Mr. Philbert's involvement in the evaluation process, Basic Services still cannot escape blame in this case. Basic Services learned of its employee's participation in the evaluation process before signing the contract with VIDE. On two occasions in January 2004, Sherwin Rey of Basic Services met with representatives of VIDE and the government's Property and Procurement Office to further negotiate price. Mr. Philbert was also present, representing VIDE, at both meetings. The presence of these two men, employer and employee, face to face at these two meetings, is memorialized in the Evaluation Meeting Attendance Roster.⁹

Despite this glaring conflict of interest, Basic Services bid on the VIDE contract, or at the very least agreed to contract with VIDE, without revealing the serious conflict of interest. Basic Services' legal and ethical obligation to do so notwithstanding, it made the decision not to disclose the conflict of interest, even though it knew or should have known that its decision not to would place all of the E-rate funding for this contract in jeopardy.

⁹ The Evaluation Meeting Attendance Roster is attached as Exhibit C.

This is where the competitive bidding violation occurred. Everything that happened afterward with which USAC takes issue was the direct result of this one unquestionably improper and unethical decision. As soon as Basic Services made this decision, the die was cast. Yet USAC mentions none of this. USAC also fails to cite any evidence that VIDE, or anyone employed by VIDE, knew at the time of its contract decision that Basic Services was simultaneously employing a member of its evaluation committee. VIDE has made all reasonable efforts to determine whether any individual employed by VIDE – past or present – was aware that Mr. Philbert was also employed by Basic Services during his tenure with the Department. To the best of its knowledge, no one employed by VIDE was aware that Mr. Philbert was associated with the vendor at the time of the evaluation process. If there is any evidence that a VIDE employee knew of this conflict, VIDE is unaware of it. There is, however, evidence to the contrary – i.e., that VIDE had no knowledge, as Mr. Philbert’s resume made no mention of any past or current employment with Basic Services.

It is important to note that VIDE did everything that an organization can reasonably do to preserve the integrity of its bid evaluation process by requiring everyone who served on that committee – including Mr. Philbert – to sign an ethics agreement.¹⁰ That agreement required the signatory, in this case Mr. Philbert, not to have any business or financial ties to any bidder and, if one existed, to disclose it. VIDE’s records include no conflict of interest disclosure statement from Mr. Philbert.

2. USAC’s Decision is Misleading on the Issue of VIDE’s Prior Knowledge

USAC’s statement, “The applicant ... should not delegate the evaluation role to anyone associated with a service provider,” is misleading because it implies, incorrectly and without foundation, that VIDE knew at the time of its contracting decision of Mr. Philbert’s connection to Basic Services. The clear implication of USAC’s statement is that VIDE knowingly assigned a role in the vendor selection process to Mr. Philbert, even though there is no evidence to that effect.

¹⁰ The signed Bid/RFP Evaluation Rules and Regulations Agreement is attached as Exhibit D.

B. Basic Services Knowingly Compromised VIDE's Competitive Bidding Process

Commission rules make clear that, “in determining to which party recovery should be directed, USAC shall consider which party was in a better position to prevent the statutory or rule violation, and which party committed the act or omission that forms the basis for the statutory or rule violation.”¹¹ As Basic Services was the party that knowingly compromised the competitive bidding process by bidding on VIDE's contract, even though it knew that one of its own employees would play a role in the bid selection, there is no question that Basic Services was in the better position to prevent the conflict of interest and thus the rule violation.

In many, if not most, cases, the applicant is responsible for competitive bidding violations, but this is clearly not such a case. USAC may not absolve itself of its responsibility to decide which party is responsible for a rule violation simply because in most cases it happens to be one party or the other. The Commission has made clear that USAC must make such decisions, based on the evidence in the record.

C. FCC Rules Require USAC to Seek Recovery from Basic Service

Because Basic Services could have prevented the rule violation, and thus was the party responsible, FCC rules require USAC to direct its recovery action against Basic Services. Accordingly, the findings that USAC should have made, but did not, are these:

In order to conduct an open and fair bidding process, the vendor should not have an employer-employee or other economic relationship with an employee of the applicant, where that relationship could serve to unfairly influence the outcome of that applicant's competitive bidding process.

When a vendor and an applicant are employing the same employee simultaneously, and that vendor knows or suspects that its employee is going to play a role in that applicant's vendor selection process, the vendor should not create a conflict of interest by bidding on that applicant's contract, unless and until it notifies the applicant of the conflict and, if possible, the conflict is unquestionably cleared.

Sherwin Ray, the owner of Basic Services, Inc., knew that his employee, Joseph Philbert, was working simultaneously for VIDE as a network technician. Moreover, he knew that Philbert would or was at least very likely to play a role in evaluating the bids that VIDE received for a

¹¹ *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 et al, Order on Reconsideration and Fourth Report and Order, 19 FCC Rcd 15252, 15257, para. 15 (2004).

contract in which his company had a keen economic interest. Because of the obvious conflict of interest that a Basic Services bid would create in these circumstances, Basic Services never should have bid on that VIDE contract.

By employing one of the members of VIDE's vendor evaluation committee, Basic Services created the conflict of interest that compromised VIDE's competitive bidding process

Basic Services bears full responsibility for the competitive bidding violation. Basic Services created and took advantage of the conflict of interest and, in so doing, violated program rules, as well as its own SPAC¹² and SPIF certifications. There is no evidence in the record to suggest that anyone at VIDE was aware of Mr. Philbert's dual employment at that time.

D. USAC's Decision Exacerbates the Devastating Impact of Last Year's Hurricanes on VIDE Schools and Undercuts the FCC's Special Relief Efforts

A year ago, on September 6th, Hurricane Irma, one of the most powerful Atlantic storms in a century, tore its way across the U.S. Virgin Islands as a Category 5 storm. Fourteen days later, another Category 5 storm, Hurricane Maria, hit the islands. The impact of the storms has been devastating.

To its credit, the FCC quickly stepped in to assist VIDE in its efforts to recover from this natural catastrophe. Among other things, the FCC made additional E-rate discounts available for the purchase of services and equipment that were disrupted, damaged, or destroyed by the hurricanes.

Because it undermines the FCC's special relief efforts, USAC's decision – resulting from the improper and unethical conduct of another party – will only serve to make matters worse. If USAC elects to seek recovery from VIDE, rather than Basic Services, the result would be completely at odds with the FCC's emergency, hurricane relief efforts.

¹² FCC Form 473, Service Provider Annual Certification (“This Service Provider is in compliance with the rules and orders governing the schools and libraries universal service support program and acknowledges that failure to be in compliance and remain in compliance with those rules and orders may result in the denial of discount funding and/or cancellation of funding commitments. I acknowledge that failure to comply with the rules and orders governing the schools and libraries universal service support program could result in civil or criminal prosecution by law enforcement authorities.”).

E. Request for Waiver of Commission Rules

1. Waiver of the Commission's Competitive Bidding Rules is Appropriate

VIDE maintains that it complied with all Commission rules and that it was Basic Services' acts and omissions that caused the conflict of interest situation, and thus the rule violation. Yet, if the Commission deems it necessary to grant the requested relief, a waiver of Section 54.503 and any other Commission rules as are necessary is appropriate given the facts of this case and the substantial hardship that would accompany an adverse decision. VIDE did everything it reasonably could do to preserve the integrity of the evaluation and selection process. It went above and beyond the requirements in place to safeguard the competitive bidding process, including requiring those serving on the committee to sign an ethics agreement. Mr. Philbert was required to disclose all business or financial ties to any bidder. That Mr. Philbert failed to disclose this information but did not, and that Basic Services was aware of the conflict of interest but chose not to disclose, was not reasonably within VIDE's control. Unfortunately for VIDE and the students it serves, USAC has determined that VIDE is responsible for repayment of all improperly disbursed E-rate funds.

2. Waiver of the Commission's Filing Deadline is Also Appropriate

The funding year 2005 and 2006 Administrator's Decision on Appeal letter is dated August 29, 2018. However, VIDE did not receive the decision letter until September 17, 2018, nearly three weeks later.¹³ The Commission has routinely waived its filing deadline when petitioners submit appeals within a reasonable period after receiving actual notice of USAC's adverse decision.¹⁴ Although the instant petition is being filed outside of the 60-day filing deadline, it is within a reasonable period after VIDE received actual notice of the decision. Therefore, waiver of the Commission's filing deadline in Section 54.720 of its rules is also appropriate.

¹³ See Exhibit A. The document bears a September 17, 2018 date stamp.

¹⁴ See *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by ABC Unified School District, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-584091, et al., CC Docket No. 02-6, Order, 26 FCC Rcd 11019 (Wireline Comp. Bur. 2011).

III. RELIEF SOUGHT

For the foregoing reasons, VIDE requests that the Commission (1) reverse USAC's commitment adjustment determinations, (2) direct USAC to discontinue recovery actions against VIDE, and (3) to the extent necessary, waive Section 54.503 and any other Commission rules necessary to grant the requested relief. VIDE also requests that the Commission waive the 60-day filing deadline in Section 54.720(a) of its rules.

Respectfully submitted *on behalf of*
Virgin Islands Department of Education,

Jeannine Bonelli
Virgin Islands Department of Education
1834 Kongens Gade
St. Thomas, VI 00802
(340) 774-0100
jbbonelli@doe.vi

November 16, 2018

Exhibit A

Administrator's Decision on Appeal
(FY 2005 and FY 2006)

Jeannine Bonelli
V.I. Department of Education
1834 Kongens Gade
St Thomas, VI 00802

JEANNINE BONELLI
PROGRAM MANAGER
OFFICE OF INSTRUCTIONAL
TECHNOLOGY

RECEIVED
9/17/18

Billed Entity Number: 154494
Form 471 Application Number: 512691
Form 486 Application Number:



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2006-2007

August 29, 2018

Jeannine Bonelli
V.I. Department of Education
1834 Kongens Gade
St Thomas, VI 00802

JEANNINE BONELLI
PROGRAM MANAGER
OFFICE OF INSTRUCTIONAL
TECHNOLOGY

9/17/18

Re: Applicant Name: V.I. DEPARTMENT OF EDUCATION
Billed Entity Number: 154494
Form 471 Application Number: 512691
Funding Request Number(s): 1419628
Your Correspondence Dated: February 22, 2018

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2006 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision. If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1419628
Decision on Appeal: Denied
Explanation:

- The record shows that after a thorough investigation, USAC determined to deny this funding request in full. It was determined that Joseph Philbert, a V.I. DOE employee, was a member of a vendor evaluation committee that selected Basic Services, Inc. as the service provider for the above listed Funding Request Number (FRN) and also had an association with the service provider. Specifically, it was determined that payments were made to Mr. Philbert by Sherwin Ray, the owner of Basic Services, Inc., during calendar years 2004-2006 when Philbert was employed on a part-time basis by Mr. Ray while also employed by V.I. DOE. FCC rules require applicants ensure an open and fair competitive bidding process which begins when the FCC Form 470 is posted to USAC's Website. The applicant must take an affirmative role in evaluating bids received and should not delegate the evaluation role to anyone associated with a service provider. In

order to conduct an open and fair bidding process, the applicant should not have a relationship with a service provider prior to or during the competitive bidding process that could serve to unfairly influence the outcome of a competition. An employee of V.I. DOE engaged in a relationship with a selected service provider and also served on a vendor evaluation committee that selected the service provider, which represents a conflict of interest that compromised the competitive bidding process. Therefore, the FRN was denied. In your appeal, you did not demonstrate that USAC's decision was incorrect. Consequently, your appeal is denied.

FCC rules require that, except under limited circumstances, an eligible school, library or consortium that includes an eligible school or library shall seek competitive bids for all services eligible for support and must conduct a fair and open competitive bidding process. See 47 C.F.R. sec. 54.503(a) and (b). The following actions violate a fair and open competitive bidding process: the applicant for supported services has a relationship with a service provider that would unfairly influence the outcome of a competition or would furnish the service provider with inside information; someone other than the applicant or an authorized representative of the applicant prepares, signs, and submits the FCC Form 470 and certification; a service provider representative is listed as the FCC Form 470 contact person and allows that service provider to participate in the competitive bidding process; the service provider prepares the applicant's FCC Form 470 or participates in the bid evaluation or vendor selection process in any way; the applicant turns over to a service provider the responsibility for ensuring a fair and open competitive bidding process; an applicant employee with a role in the service provider selection process also has an ownership interest in the service provider seeking to participate in the competitive bidding process; and the applicants FCC Form 470 does not describe the supported services with sufficient specificity to enable interested service providers to submit responsive bids. See 47 C.F.R. sec. 54.503(a). Pursuant to the FCC guidance, the fair and open competitive bidding process is violated if any service provider contact information is listed on the associated FCC Form 470, including address, telephone, fax numbers, and e-mail address. See Request for Review of the Decision of the Universal Service Administrator by Consorcio de Escuelas y Bibliotecas de Puerto Rico, San Juan, Puerto Rico, et al., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., File No. SLD-228216, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 13628, DA 02-1676 para. 11 (rel. July 15, 2002). The FCC's Fifth Report and Order requires recovery of all funds disbursed for any funding request in which the competitive bidding rules have been violated. See Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15815-15816, FCC 04-190 para. 21 (rel. Aug. 13, 2004).

Since your appeal was denied in full, dismissed or cancelled, you may file an appeal with the FCC. Your appeal must be postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the

FCC can be found under the Reference Area/"Appeals" of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

JEANNINE BONELLI
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OFFICE OF INSTRUCTIONAL
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9/17/18

Jeannine Bonelli
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9/17/18

Billed Entity Number: 154494
Form 471 Application Number: 479653
Form 486 Application Number:



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2005-2006

August 29, 2018

Jeannine Bonelli
V.I. Department of Education
1834 Kongens Gade
St. Thomas, VI 00802

JEANNINE BONELLI
PROGRAM MANAGER

OFFICE OF INSTRUCTIONAL
TECHNOLOGY

Re: Applicant Name: V.I. DEPARTMENT OF EDUCATION
Billed Entity Number: 154494
Form 471 Application Number: 479653
Funding Request Number(s): 1328656
Your Correspondence Dated: February 22, 2018



After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2005 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision. If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1328656
Decision on Appeal: Denied
Explanation:

- The record shows that after a thorough investigation, USAC determined to deny this funding request in full. It was determined that Joseph Philbert, a V.I. DOE employee, was a member of a vendor evaluation committee that selected Basic Services, Inc. as the service provider for the above listed Funding Request Number (FRN) and also had an association with the service provider. Specifically, it was determined that payments were made to Mr. Philbert by Sherwin Ray, the owner of Basic Services, Inc., during calendar years 2004-2006 when Philbert was employed on a part-time basis by Mr. Ray while also employed by V.I. DOE. FCC rules require applicants ensure an open and fair competitive bidding process which begins when the FCC Form 470 is posted to USAC's Website. The applicant must take an affirmative role in evaluating bids received and should not delegate the evaluation role to anyone associated with a service provider. In order to conduct an open and fair bidding process, the applicant should not have a relationship with a service provider prior to or during the competitive bidding process

that could serve to unfairly influence the outcome of a competition. An employee of V.I. DOE engaged in a relationship with a selected service provider and also served on a vendor evaluation committee that selected the service provider, which represents a conflict of interest that compromised the competitive bidding process. Therefore, the FRN was denied. In your appeal, you did not demonstrate that USAC's decision was incorrect. Consequently, your appeal is denied.

FCC rules require that, except under limited circumstances, an eligible school, library or consortium that includes an eligible school or library shall seek competitive bids for all services eligible for support and must conduct a fair and open competitive bidding process. See 47 C.F.R. sec. 54.503(a) and (b). The following actions violate a fair and open competitive bidding process: the applicant for supported services has a relationship with a service provider that would unfairly influence the outcome of a competition or would furnish the service provider with inside information; someone other than the applicant or an authorized representative of the applicant prepares, signs, and submits the FCC Form 470 and certification; a service provider representative is listed as the FCC Form 470 contact person and allows that service provider to participate in the competitive bidding process; the service provider prepares the applicant's FCC Form 470 or participates in the bid evaluation or vendor selection process in any way; the applicant turns over to a service provider the responsibility for ensuring a fair and open competitive bidding process; an applicant employee with a role in the service provider selection process also has an ownership interest in the service provider seeking to participate in the competitive bidding process; and the applicants FCC Form 470 does not describe the supported services with sufficient specificity to enable interested service providers to submit responsive bids. See 47 C.F.R. sec. 54.503(a). Pursuant to the FCC guidance, the fair and open competitive bidding process is violated if any service provider contact information is listed on the associated FCC Form 470, including address, telephone, fax numbers, and e-mail address. See Request for Review of the Decision of the Universal Service Administrator by Consorcio de Escuelas y Bibliotecas de Puerto Rico, San Juan, Puerto Rico, et al., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., File No. SLD-228216, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 13628, DA 02-1676 para. 11 (rel. July 15, 2002). The FCC's Fifth Report and Order requires recovery of all funds disbursed for any funding request in which the competitive bidding rules have been violated. See Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15815-15816, FCC 04-190 para. 21 (rel. Aug. 13, 2004).

Since your appeal was denied in full, dismissed or cancelled, you may file an appeal with the FCC. Your appeal must be postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found under the Reference Area/"Appeals" of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

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We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

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9/17/18

Exhibit B

Administrator's Decision on Appeal (FY 2004)



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2004-2005

November 09, 2018

Catherine Cruzan
Funds for Learninc, LLC
2575 Kelley Pointe Parkway, STE 200
Edmond, OK 73013

RECEIVED

NOV 13 2018

Initial: _____

Re: Applicant Name: V.I. DEPARTMENT OF EDUCATION
Billed Entity Number: 154494
Form 471 Application Number: 423598
Funding Request Number(s): 1179841
Your Correspondence Dated: August 31, 2018

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2004 Commitment Adjustment Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision. If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1179841
Decision on Appeal: **Denied**
Explanation:

- The record shows that after a thorough investigation, USAC determined to rescind the funds committed under the above listed funding request number (FRN) in full. It was determined that Joseph Philbert, a V.I. DOE employee, was a member of a vendor evaluation committee that selected Basic Services, Inc. as the service provider for the FRN and also had an association with the service provider. Specifically, it was determined that payments were made to Mr. Philbert by Sherwin Ray, the owner of Basic Services, Inc., during calendar years 2004-2006 when Philbert was employed on a part-time basis by Mr. Ray while also employed by V.I. DOE. FCC rules require applicants ensure an open and fair competitive bidding process which begins when the FCC Form 470 is posted to USAC'S Website. The applicant must take an affirmative role in evaluating bids received and should not delegate the evaluation role to anyone associated with a service provider. In order to conduct an open and fair bidding process, the applicant should not have a relationship with a service provider prior to or during the

competitive bidding process that could serve to unfairly influence the outcome of a competition. An employee of V.I. DOE engaged in a relationship with a selected service provider and also served on a vendor evaluation committee that selected the service provider, which represents a conflict of interest that compromised the competitive bidding process. Therefore, the commitment has been rescinded in full and USAC will seek recovery of any improperly disbursed funds from both the applicant and the applicant's service provider. In your appeal, you did not demonstrate that USAC's decision was incorrect. Consequently, your appeal is denied.

Since your appeal was denied in full, dismissed or cancelled, you may file an appeal with the FCC. Your appeal must be postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found under the Reference Area/"Appeals" of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Jeannine Bonelli

Catherine Cruzan
Funds for Learninc, LLC
2575 Kelley Pointe Parkway, STE 200
Edmond, OK 73013

RECEIVED

NOV 13 2018

Initial: _____

Billed Entity Number: 154494
Form 471 Application Number: 423598
Form 486 Application Number:



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2004-2005

November 09, 2018

Catherine Cruzan
Funds for Learning, LLC
2575 Kelley Pointe Parkway, STE 200
Edmond, OK 73013

RECEIVED

NOV 13 2018

Initial: _____

Re: Applicant Name: V.I. DEPARTMENT OF EDUCATION
Billed Entity Number: 154494
Form 471 Application Number: 427100
Funding Request Number(s): 1182594, 1182692
Your Correspondence Dated: August 31, 2018

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2004 Commitment Adjustment Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision. If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1182594, 1182692
Decision on Appeal: **Denied**
Explanation:

- The record shows that after a thorough investigation, USAC determined to rescind the funds committed under the above listed funding request numbers (FRNs) in full. It was determined that Joseph Philbert, a V.I. DOE employee, was a member of a vendor evaluation committee that selected Basic Services, Inc. as the service provider for the FRNs and also had an association with the service provider. Specifically, it was determined that payments were made to Mr. Philbert by Sherwin Ray, the owner of Basic Services, Inc., during calendar years 2004-2006 when Philbert was employed on a part-time basis by Mr. Ray while also employed by V.I. DOE. FCC rules require applicants ensure an open and fair competitive bidding process which begins when the FCC Form 470 is posted to USAC'S Website. The applicant must take an affirmative role in evaluating bids received and should not delegate the evaluation role to anyone associated with a service provider. In order to conduct an open and fair bidding process, the applicant should not have a relationship with a service provider prior to or during the

competitive bidding process that could serve to unfairly influence the outcome of a competition. An employee of V.I. DOE engaged in a relationship with a selected service provider and also served on a vendor evaluation committee that selected the service provider, which represents a conflict of interest that compromised the competitive bidding process. Therefore, the commitment has been rescinded in full and USAC will seek recovery of any improperly disbursed funds from both the applicant and the applicant's service provider. In your appeal, you did not demonstrate that USAC's decision was incorrect. Consequently, your appeal is denied.

Since your appeal was denied in full, dismissed or cancelled, you may file an appeal with the FCC. Your appeal must be postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found under the Reference Area/"Appeals" of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Jeannine Bonelli

Catherine Cruzan
Funds for Learning, LLC
2575 Kelley Pointe Parkway, STE 200
Edmond, OK 73013

RECEIVED
NOV 13 2018
Initial: _____

Billed Entity Number: 154494
Form 471 Application Number: 427100
Form 486 Application Number:

Exhibit C

Evaluation Meeting Attendance Roster



GOVERNMENT OF
THE UNITED STATES VIRGIN ISLANDS

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DEPARTMENT OF PROPERTY AND PROCUREMENT



Office of the Commissioner
Tel.: (340) 774-0828, Fax: (340) 777-9587 (STT)
Tel.: (340) 773-1561, Fax: (340) 773-0986 (STX)

Division of Fiscal & Personnel
Fax: (340) 777-8443

Division of Procurement
Fax: (340) 774-9704

Division of Property
Fax: (340) 777-8362

January 16, 2004

Division of Printing
Fax: (340) 714-1575

Division of Transportation
Tel.: (340) 774-0388
Fax: (340) 774-1163

Division of Central Stores
Tel.: (340) 774-9054
Fax: (340) 774-9333

MEMORANDUM

TO: Marc Biggs
Commissioner

FROM: Evaluation Committee

SUBJECT: RFP-0004-2004
Proposal for E-Rate Funding Year 2004 Telecommunication
Internet Access and Internal Connection Services for the two (2)
School districts in the territory of the U.S. Virgin Islands for the
Department of Education

The Evaluation Committee met on January 7, 2004 to review the six (6) responses received on the above referenced Request for Proposal, which was issued on November 25, 2003 and received on December 29, 2003.

The Committee chair was Mr. Sal Griffith, the other members were Ms. Nicole Roberts, Mrs. Lisa Alejandro representing the Department of Property and Procurement along with Mr. Clinton Stapleton, Mr. Cosmore Wheatley and Mr. Joseph Philbert of the Department of Education (User Agency).

The first meeting was held to determine if the bidders were responsive to the scope of services. This project as written by the Department of Education outlined four (4) separate areas of services and offered the bidders the opportunity to submit responses to one service or all services. Cingular Wireless was rendered non-responsive for failure to submit required information on Project experience, Project profile, Project Reference, and staffing. Omni Systems was rendered non-responsive for failure to submit an accurate project approach.

The areas of Services are as follows: Program Management; Internet Access; Telecommunications, and Internal Connections. Based on the oral Presentation by the four (4) firms the committee overall ratings are as follows:

SERVICES

POINTS

Program Management

Comtek 95
IT Solutions NR
Basic Services NR
JDL 489

Internet Access

Comtek NR
IT Solutions NR
Basic Services NR
JDL 471

Telecommunications

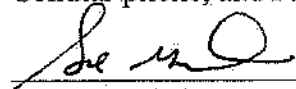
Comtek 395
IT Solutions 222
Basic Services 420
JDL 476

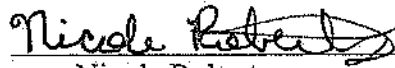

Internal Connections

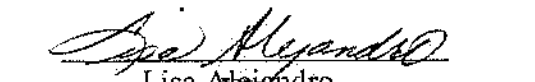
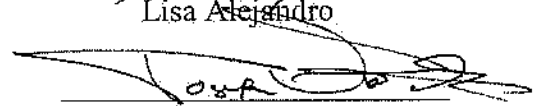
Comtek 285
IT Solutions 199
Basic Services 477 (1. School Cabling Only)
JDL 462 (#2 thru #7)

Based on the above rating and the urgency of this project the representatives of the User Agency requested the cost proposal submitted by JDL Technologies, and Basic Services for review prior to contract negotiations.

It is therefore, the recommendation of the Evaluation Committee that the Department of Property and Procurement on behalf of the Department of Education enter into cost negotiations with **JDL Technologies, and Basic Services** the firms receiving the highest cumulative points as indicated in bold print to provide the services requested in RFP-0004-2004. It is further recommended that the Scope of Work for Long Distance, Cellular phone, and Pager service be re-advertised.


Sal Griffith


Nicole Roberts

Clinton Stapleton


Lisa Alejandro

Joseph Philbert

APPROVED/DISAPPROVED: 1/27/04
(Date)


Marc Biggs
Commissioner

* Signatures of other members on attached fax copy

Time: 1:00

[illegible]

Evaluation Meeting Attendance Roster

Project No: 0004-2004

Date: 1-12-04

Time: 1:00 PM

Name	Firm/Department	Telephone	Fax Number
SM GRANT	PROPERTY AND PROCUREMENT	774-0828	774-9704
Nicole Roberts	P&P	774-0828	
Lisa Alexander	P&P	774-0828	
Joseph Pilibert	DOE	775-2250 ²⁵³	
Clinton Stapleton	Department of Education	775-2250 ²³⁴	775-3460
Charles P. Boudreau	Department of Education	778-1600	778-5724
Clinton Miller	"	"	"
Cosmo Wheatley	Dept. of Education	775-5551	775-6976
Shervin Key	Basic Services, Inc.	775-5858	775-7166

690-1542

Exhibit D

Signed Bid/RFP Evaluation Rules and
Regulations Agreement

**GOVERNMENT OF
THE UNITED STATES VIRGIN ISLANDS**

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DEPARTMENT OF PROPERTY AND PROCUREMENT



**DIVISION OF
PROCUREMENT**

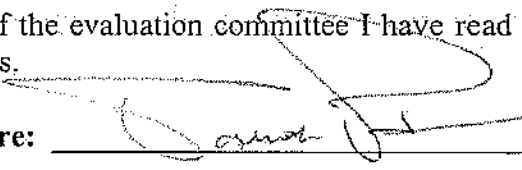
Bid/RFP Evaluation Rules and Regulations

STT. Tel.: (340) 774-0828
Fax: (340) 777-9587
STX. Tel.: (340) 773-1561
Fax: (340) 773-0986

The Evaluation Committee member shall:

1. Have no personal interest or relationship with bidders, including business or financial ties. Any member having such an interest must declare it to the Committee Chair prior to participation in the evaluation process.
2. Vendor contact shall be strictly through the Commissioner of Property and Procurement or his designee. There shall be no individual meetings, lunches, entertainment, or direct contact with vendors who have submitted offers once you have been appointed to the Evaluation Committee.
3. Decline all personal gifts and gratuities from prospective bidders. Even appearances of such conflict must be avoided.
4. Keep all committee deliberations in confidence.
5. Shall perform a fair and impartial evaluation of all proposals and bids.
6. Grant all competitive bidders equal consideration, to regard each transaction on its own merits, foster and promote fair, ethical and legal trade practices.
7. Members of the committee shall achieve a recommendation that will be in the best interest of the Government of the Virgin Islands, one that is fair and impartial to all bidders.

As a member of the evaluation committee I have read and shall comply with the above stated conditions.

Signature:  Date: 01-07-04

Print Name: Joseph Philbert

Department: DOC